

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LAWRENCE J. HOFFART and ) NO. CV 12-10465-E  
SANDRA M. HOFFART, )  
)

Plaintiffs, )  
)

v. )  
)

WASHINGTON MUTUAL BANK, )  
NATIONAL ASSOCIATION, a domestic )  
corporation, )  
)

Defendant. )  
)  
\_\_\_\_\_  
)

**ORDER OF DISMISSAL**

Plaintiffs paid the filing fee and filed a Complaint on December 6, 2012. Plaintiffs have not filed any proof of service of the Summons and Complaint. By Minute Order filed April 10, 2013, the Court ordered Plaintiffs to show cause in writing, no later than April 30, 2013, why this action should not be dismissed for lack of prosecution and for failure to comply with Rule 4(m) of the Federal Rules of Civil Procedure. The Minute Order warned Plaintiffs that "[f]ailure to file a timely response to this Order may result in dismissal of the action." Nevertheless, Plaintiffs did not file any response to the Minute Order within the allotted time.

1 Under Rule 4(m) of the Federal Rules of Civil Procedure, the  
2 Court may dismiss an action without prejudice if the summons and  
3 complaint are not served on the defendant within 120 days after filing  
4 the complaint or within the time specified by the Court. Efaw v.  
5 Williams, 473 F.3d 1038, 1041 (9th Cir. 2007). Rule 4(m) requires a  
6 court to extend the time for service if a plaintiff shows good cause  
7 for the failure to serve. "At a minimum, 'good cause' means excusable  
8 neglect." Bourdette v. Barnette, 923 F.2d 754, 756 (9th Cir. 1991).  
9 Here, Plaintiffs have not shown good cause for their failure to effect  
10 timely service on the Defendant.

11

12 A court has "broad discretion" to extend the time for service  
13 under Rule 4(m), even absent a showing of good cause. See Efaw v.  
14 Williams, 473 F.3d at 1040-41; see also United States v. 2,164  
15 Watches, More or Less, Bearing a Registered Trademark of Guess?, Inc.,  
16 366 F.3d 767, 773 (9th Cir. 2004) (Rule 4(m) gives courts "leeway to  
17 preserve meritorious lawsuits despite untimely service of process").  
18 A court may consider various factors including prejudice to the  
19 defendant, actual notice, a possible limitations bar, and eventual  
20 service. Efaw v. Williams, 473 F.3d at 1041. Any such dismissal  
21 should be without prejudice. See id. at 772. In the present case,  
22 Plaintiffs' failure to comply with the Minute Order renders an  
23 evaluation of these factors somewhat speculative. There is no  
24 evidence that Defendant has actual notice of this action. The  
25 possible prejudice to the Defendant resulting from the delay is  
26 unknown, as is the impact of dismissal on a possible future  
27 limitations bar. There is no indication when, if ever, Plaintiffs  
28 eventually would effect service.

1       Service of the Summons and Complaint by the United States  
2 Marshals Service is not an appropriate option in the present case.  
3 The Court generally will order Marshals' service when a plaintiff, in  
4 forma pauperis, files a complaint that is not dismissed sua sponte  
5 under 28 U.S.C. § 1915(e)(2)(B). See Fed. R. Civ. P. 4(c)(3).  
6 Plaintiffs are not in forma pauperis. Rule 4(c)(3) grants the Court  
7 discretion to order Marshals' service of a non-IFP complaint "in  
8 certain limited circumstances as when a hostile defendant threatens  
9 injury to the process server." Wright and Miller, Federal Practice  
10 and Procedure, § 1090, p. 476 (3rd ed. 2002). Plaintiffs have not  
11 made any such showing.

12  
13       In addition to dismissing this action for failure to effect  
14 timely service, the Court may dismiss this action for failure to  
15 prosecute. Neither Plaintiff filed a timely response, despite a Court  
16 Order that Plaintiffs do so. The Court has inherent power to achieve  
17 the orderly and expeditious disposition of cases by dismissing actions  
18 for failure to prosecute. See Link v. Wabash R.R., 370 U.S. 626, 629-  
19 30 (1962).

20  
21       For all of the foregoing reasons, it is ordered that this action  
22 is dismissed without prejudice.

23  
24       LET JUDGMENT BE ENTERED ACCORDINGLY.

25  
26       DATED: 5/13, 2013.  
27  
28

UNITED STATES DISTRICT JUDGE